



Sen. Pamela J. Althoff

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LRB099 16934 HEP 46805 a

1 AMENDMENT TO SENATE BILL 2677

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2677 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Residential Real Property Disclosure Act is  
5 amended by changing Section 70 as follows:

6 (765 ILCS 77/70)

7 Sec. 70. Predatory lending database program.

8 (a) As used in this Article:

9 "Adjustable rate mortgage" or "ARM" means a closed-end  
10 mortgage transaction that allows adjustments of the loan  
11 interest rate during the first 3 years of the loan term.

12 "Borrower" means a person seeking a mortgage loan.

13 "Broker" means a "broker" or "loan broker", as defined in  
14 subsection (p) of Section 1-4 of the Residential Mortgage  
15 License Act of 1987.

16 "Closing agent" means an individual assigned by a title

1 insurance company or a broker or originator to ensure that the  
2 execution of documents related to the closing of a real estate  
3 sale or the refinancing of a real estate loan and the  
4 disbursement of closing funds are in conformity with the  
5 instructions of the entity financing the transaction.

6 "Counseling" means in-person counseling provided by a  
7 counselor employed by a HUD-approved counseling agency to all  
8 borrowers, or documented telephone counseling where a hardship  
9 would be imposed on one or more borrowers. A hardship shall  
10 exist in instances in which the borrower is confined to his or  
11 her home due to medical conditions, as verified in writing by a  
12 physician, or the borrower resides 50 miles or more from the  
13 nearest participating HUD-approved housing counseling agency.  
14 In instances of telephone counseling, the borrower must supply  
15 all necessary documents to the counselor at least 72 hours  
16 prior to the scheduled telephone counseling session.

17 "Counselor" means a counselor employed by a HUD-approved  
18 housing counseling agency.

19 "Credit score" means a credit risk score as defined by the  
20 Fair Isaac Corporation, or its successor, and reported under  
21 such names as "BEACON", "EMPIRICA", and "FAIR ISAAC RISK SCORE"  
22 by one or more of the following credit reporting agencies or  
23 their successors: Equifax, Inc., Experian Information  
24 Solutions, Inc., and TransUnion LLC. If the borrower's credit  
25 report contains credit scores from 2 reporting agencies, then  
26 the broker or loan originator shall report the lower score. If

1 the borrower's credit report contains credit scores from 3  
2 reporting agencies, then the broker or loan originator shall  
3 report the middle score.

4 "Department" means the Department of Financial and  
5 Professional Regulation.

6 "Exempt person or entity" means that term as it is defined  
7 in subsections (d) (1), (d) (1.5), and (d) (1.8) of Section 1-4 of  
8 the Residential Mortgage License Act of 1987.

9 "First-time homebuyer" means a borrower who has not held an  
10 ownership interest in residential property.

11 "HUD-approved counseling" or "counseling" means counseling  
12 given to a borrower by a counselor employed by a HUD-approved  
13 housing counseling agency.

14 "Interest only" means a closed-end loan that permits one or  
15 more payments of interest without any reduction of the  
16 principal balance of the loan, other than the first payment on  
17 the loan.

18 "Lender" means that term as it is defined in subsection (g)  
19 of Section 1-4 of the Residential Mortgage License Act of 1987.

20 "Licensee" means that term as it is defined in subsection  
21 (e) of Section 1-4 of the Residential Mortgage License Act of  
22 1987.

23 "Mortgage loan" means that term as it is defined in  
24 subsection (f) of Section 1-4 of the Residential Mortgage  
25 License Act of 1987.

26 "Negative amortization" means an amortization method under

1 which the outstanding balance may increase at any time over the  
2 course of the loan because the regular periodic payment does  
3 not cover the full amount of interest due.

4 "Originator" means a "loan originator" as defined in  
5 subsection (hh) of Section 1-4 of the Residential Mortgage  
6 License Act of 1987, except an exempt person, and means a  
7 "mortgage loan originator" as defined in subsection (jj) of  
8 Section 1-4 of the Residential Mortgage License Act of 1987,  
9 except an exempt person.

10 "Points and fees" has the meaning ascribed to that term in  
11 Section 10 of the High Risk Home Loan Act.

12 "Prepayment penalty" means a charge imposed by a lender  
13 under a mortgage note or rider when the loan is paid before the  
14 expiration of the term of the loan.

15 "Refinancing" means a loan secured by the borrower's or  
16 borrowers' primary residence where the proceeds are not used as  
17 purchase money for the residence.

18 "Title insurance company" means any domestic company  
19 organized under the laws of this State for the purpose of  
20 conducting the business of guaranteeing or insuring titles to  
21 real estate and any title insurance company organized under the  
22 laws of another State, the District of Columbia, or a foreign  
23 government and authorized to transact the business of  
24 guaranteeing or insuring titles to real estate in this State.

25 (a-5) A predatory lending database program shall be  
26 established within Cook County. The program shall be

1 administered in accordance with this Article. The inception  
2 date of the program shall be July 1, 2008. A predatory lending  
3 database program shall be expanded to include Kane, Peoria, and  
4 Will counties. The inception date of the expansion of the  
5 program as it applies to Kane, Peoria, and Will counties shall  
6 be July 1, 2010. Until the inception date, none of the duties,  
7 obligations, contingencies, or consequences of or from the  
8 program shall be imposed. The program shall apply to all  
9 mortgage applications that are governed by this Article and  
10 that are made or taken on or after the inception of the  
11 program.

12 (b) The database created under this program shall be  
13 maintained and administered by the Department. The database  
14 shall be designed to allow brokers, originators, counselors,  
15 title insurance companies, and closing agents to submit  
16 information to the database online. The database shall not be  
17 designed to allow those entities to retrieve information from  
18 the database, except as otherwise provided in this Article.  
19 Information submitted by the broker or originator to the  
20 Department may be used to populate the online form submitted by  
21 a counselor, title insurance company, or closing agent.

22 (c) Within 10 business days after taking a mortgage  
23 application, the broker or originator for any mortgage on  
24 residential property within the program area must submit to the  
25 predatory lending database all of the information required  
26 under Section 72 and any other information required by the

1 Department by rule. Within 7 business days after receipt of the  
2 information, the Department shall compare that information to  
3 the housing counseling standards in Section 73 and issue to the  
4 borrower and the broker or originator a determination of  
5 whether counseling is recommended for the borrower. The  
6 borrower may not waive counseling. If at any time after  
7 submitting the information required under Section 72 the broker  
8 or originator (i) changes the terms of the loan or (ii) issues  
9 a new commitment to the borrower, then, within 5 business days  
10 thereafter, the broker or originator shall re-submit all of the  
11 information required under Section 72 and, within 4 business  
12 days after receipt of the information re-submitted by the  
13 broker or originator, the Department shall compare that  
14 information to the housing counseling standards in Section 73  
15 and shall issue to the borrower and the broker or originator a  
16 new determination of whether re-counseling is recommended for  
17 the borrower based on the information re-submitted by the  
18 broker or originator. The Department shall require  
19 re-counseling if the loan terms have been modified to meet  
20 another counseling standard in Section 73, or if the broker has  
21 increased the interest rate by more than 200 basis points.

22 (d) If the Department recommends counseling for the  
23 borrower under subsection (c), then the Department shall notify  
24 the borrower of all participating HUD-approved counseling  
25 agencies located within the State and direct the borrower to  
26 interview with a counselor associated with one of those

1 agencies. Within 10 business days after receipt of the notice  
2 of HUD-approved counseling agencies, it is the borrower's  
3 responsibility to select one of those agencies and shall engage  
4 in an interview with a counselor associated with that agency.  
5 The selection must take place and the appointment for the  
6 interview must be set within 10 business days, although the  
7 interview may take place beyond the 10 business day period.  
8 Within 7 business days after interviewing the borrower, the  
9 counselor must submit to the predatory lending database all of  
10 the information required under Section 74 and any other  
11 information required by the Department by rule. Reasonable and  
12 customary costs not to exceed \$300 associated with counseling  
13 provided under the program shall be paid by the broker or  
14 originator and shall not be charged back to, or recovered from,  
15 the borrower. The Department shall annually calculate to the  
16 nearest dollar an adjusted rate for inflation. A counselor  
17 shall not recommend or suggest that a borrower contact any  
18 specific mortgage origination company, financial institution,  
19 or entity that deals in mortgage finance to obtain a loan,  
20 another quote, or for any other reason related to the specific  
21 mortgage transaction; however, a counselor may suggest that the  
22 borrower seek an opinion or a quote from another mortgage  
23 origination company, financial institution, or entity that  
24 deals in mortgage finance. A counselor or housing counseling  
25 agency that in good faith provides counseling shall not be  
26 liable to a broker or originator or borrower for civil damages,

1 except for willful or wanton misconduct on the part of the  
2 counselor in providing the counseling.

3 (e) The broker or originator and the borrower may not take  
4 any legally binding action concerning the loan transaction  
5 until the later of the following:

6 (1) the Department issues a determination not to  
7 recommend HUD-approved counseling for the borrower in  
8 accordance with subsection (c); or

9 (2) the Department issues a determination that  
10 HUD-approved counseling is recommended for the borrower  
11 and the counselor submits all required information to the  
12 database in accordance with subsection (d).

13 (f) Within 10 business days after closing, the title  
14 insurance company or closing agent must submit to the predatory  
15 lending database all of the information required under Section  
16 76 and any other information required by the Department by  
17 rule.

18 (g) The title insurance company or closing agent shall  
19 attach to the mortgage a certificate of compliance with the  
20 requirements of this Article, as generated by the database. If  
21 the transaction is exempt, the title insurance company or  
22 closing agent shall attach to the mortgage a certificate of  
23 exemption, as generated by the database. If the title insurance  
24 company or closing agent fails to attach the certificate of  
25 compliance or exemption, whichever is required, then the  
26 mortgage is not recordable. In addition, if any lis pendens for

1 a residential mortgage foreclosure is recorded on the property  
2 within the program area, a certificate of service must be  
3 simultaneously recorded that affirms that a copy of the lis  
4 pendens was filed with the Department. A lis pendens filed  
5 after July 1, 2016 shall be filed with the Department  
6 electronically. ~~The lis pendens may be filed with the~~  
7 ~~Department either electronically or by filing a hard copy.~~ If  
8 the certificate of service is not recorded, then the lis  
9 pendens pertaining to the residential mortgage foreclosure in  
10 question is not recordable and is of no force and effect.

11 (h) All information provided to the predatory lending  
12 database under the program is confidential and is not subject  
13 to disclosure under the Freedom of Information Act, except as  
14 otherwise provided in this Article. Information or documents  
15 obtained by employees of the Department in the course of  
16 maintaining and administering the predatory lending database  
17 are deemed confidential. Employees are prohibited from making  
18 disclosure of such confidential information or documents. Any  
19 request for production of information from the predatory  
20 lending database, whether by subpoena, notice, or any other  
21 source, shall be referred to the Department of Financial and  
22 Professional Regulation. Any borrower may authorize in writing  
23 the release of database information. The Department may use the  
24 information in the database without the consent of the  
25 borrower: (i) for the purposes of administering and enforcing  
26 the program; (ii) to provide relevant information to a

1 counselor providing counseling to a borrower under the program;  
2 or (iii) to the appropriate law enforcement agency or the  
3 applicable administrative agency if the database information  
4 demonstrates criminal, fraudulent, or otherwise illegal  
5 activity.

6 (i) Nothing in this Article is intended to prevent a  
7 borrower from making his or her own decision as to whether to  
8 proceed with a transaction.

9 (j) Any person who violates any provision of this Article  
10 commits an unlawful practice within the meaning of the Consumer  
11 Fraud and Deceptive Business Practices Act.

12 (j-1) A violation of any provision of this Article by a  
13 mortgage banking licensee or licensed mortgage loan originator  
14 shall constitute a violation of the Residential Mortgage  
15 License Act of 1987.

16 (j-2) A violation of any provision of this Article by a  
17 title insurance company, title agent, or escrow agent shall  
18 constitute a violation of the Title Insurance Act.

19 (j-3) A violation of any provision of this Article by a  
20 housing counselor shall be referred to the Department of  
21 Housing and Urban Development.

22 (k) During the existence of the program, the Department  
23 shall submit semi-annual reports to the Governor and to the  
24 General Assembly by May 1 and November 1 of each year detailing  
25 its findings regarding the program. The report shall include,  
26 by county, at least the following information for each

1 reporting period:

2 (1) the number of loans registered with the program;

3 (2) the number of borrowers receiving counseling;

4 (3) the number of loans closed;

5 (4) the number of loans requiring counseling for each  
6 of the standards set forth in Section 73;

7 (5) the number of loans requiring counseling where the  
8 mortgage originator changed the loan terms subsequent to  
9 counseling;

10 (6) the number of licensed mortgage brokers and loan  
11 originators entering information into the database;

12 (7) the number of investigations based on information  
13 obtained from the database, including the number of  
14 licensees fined, the number of licenses suspended, and the  
15 number of licenses revoked;

16 (8) a summary of the types of non-traditional mortgage  
17 products being offered; and

18 (9) a summary of how the Department is actively  
19 utilizing the program to combat mortgage fraud.

20 (Source: P.A. 97-891, eff. 1-1-13; 98-1081, eff. 1-1-15.)

21 Section 99. Effective date. This Act takes effect upon  
22 becoming law."